IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 15077 of 2007(T)

PETITIONER:

A.T.ALI,
S/O.KUNHAVARAN,
AMMARAMBATH THAZHATHODI HOUSE,
ULLANAM NORTH, PARAPPANANGADI,
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU PAUL

RESPONDENTS:

THE THRISSUR MUNICIPAL CORPORATION,
REPRESENTED BY ITS SECRETARY,THRISSUR.

BY ADV. SRI.K.B.MOHANDAS,SC,THRISSUR CORPORATION
SRI.LELLULAL T.G.THUNDATHIL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 15077 OF 2007 T

Dated this the 14th June, 2007

JUDGMENT

Case of petitioner, in brief, is as follows:

Petitioner was granted licence in 2004 to run a canteen in the Sakthan Thamburan Private Bus Stand, Thrissur in a building owned by the respondent Corporation. The licence was granted on payment of Rs.50,111/= as monthly licence fee for a period of three years as evident from Ext.P1 agreement dated 22.5.2004. Petitioner remitted Rs.3,00,666/= towards Security Deposit vide Ext.P3 Demand Draft and he also remitted advance licence fee of Rs.50,111/=. He made Ext.P4 representation on 17.5.2004 stating that the shed in which the canteen is to be conducted lies in a highly dilapidated condition and it requires substantial repairs. It is the further case of the petitioner that he executed Ext.P5 Bank Guarantee for an amount of Rs.1 Lakh. He would contend that the licence fee in the previous years were between Rs.10,000/= and Rs.36,000/= per month, but

those persons could not run the canteen profitably. It is the further case of the petitioner that he had to carry out major repair works, modification and furnishing of the shed on the specific understanding that the respondent will allow him to continue to run the canteen after three years, subject to reasonable enhancement in the licence fee. It is stated that the petitioner has spent nearly Rs.20 Lakhs and carried out substantial works. He further contends that the licence was being renewed as evident from Exts.P6 and P7 for the years 2004 - 2005 and 2005 - 2006. However, the Corporation Council Members have decided to put the canteen in auction again this year. Petitioner made Ext.P8 representation on 9.4.2007 pointing out his difficulties due to the loan availed to modify the building. However, Ext.P9 notice dated 5.5.2007 was issued calling upon the petitioner to hand over the key. Petitioner challenges Ext.P9 and seeks a direction not to evict him from the canteen of the Sakthan Thamburan Bus Stand under the respondent.

2. A Counter Affidavit is filed, inter alia, stating that the

contract was for a period of three years as evident from Ext.R1 tender notice. It is further stated that the petitioner had made an application requesting the Corporation to exempt him from payment of licence fee for a period of one month during which time, according to petitioner, the canteen was kept closed for doing the repair work. The Council rejected the same vide Ext.R1(a) resolution. This being the position, it is stated that the contention of petitioner that he had to keep the canteen closed for a period of four and a half months for repairs, is false. The premises of the Sakthan Thumburan Private Bus Stand is in a fast developing area. Granting of licence for a period of more than three years at a stretch will cause much financial loss to the Corporation, it is stated. It is stated that the amount tendered as monthly licence fee in 2007 for a period of three years is Rs.1,57,500/= which is more than three times of the licence fee paid by the petitioner. The Corporation decided to invite new tenders as per decision dated 9.5.2007 of the Finance Standing Committee of the respondent Corporation. It is stated that the

application of the petitioner for extension was not liable to be considered in the light of the decision of the Corporation to invite new tenders, and the petitioner was informed accordingly vide letter dated 20.4.2007. Petitioner participated in the new tender on 2.5.2007 quoting a licence fee of Rs.55,000/=. It is also stated that the Corporation has not given any consent to the petitioner to spend any amount for effecting repairs and the averment that the petitioner has spent some amount towards repairs and maintenance cannot be accepted by the Corporation. Regarding the Tourist Home at Round North belonging to the Corporation, it is stated that it is for a period of five years.

3. Petitioner has filed a Reply Affidavit, inter alia, stating that there is discrimination and he pointed out a case of Bini Tourist Home being conducted by the wife of one Shri Ashokan, who is an abkari contractor. It is stated that there is violation of the conditions of the licence by the licensee and huge amounts are due towards monthly licence fee which has been written off. In the case of other buildings also where shop rooms have been

given, the same is the case. Fresh tenders were not invited after the period of the licence. There is discrimination, it is alleged. His application was rejected vide Ext.R2, when he made application for one month first, thinking that he can make applications for subsequent months. It is also stated that though a person has quoted an exorbitant amount in the tender, so far he has not executed any agreement with the Corporation. It shows the oblique motives and no amount has been lost, it is stated.

4. I heard the learned counsel appearing for the petitioner and the learned counsel appearing on behalf of the respondent Corporation. Counsel for petitioner would contend that this is a case where Section 215 of the Kerala Municipality Act which will apply. He would rely on Section 472 and contend that unlike in a case covered by Section 472, there is no embargo in renewing a contract for a period beyond three years. He would further contend that the petitioner made Ext.P8 application dated 9.4.2007 for renewal. No decision was taken on the same. Petitioner is entitled to renewal of the licence, particularly

having regard to the facts of this case where the petitioner has spent substantial amount for carrying out repairs and where there is no allegation against the petitioner that he has violated any of the conditions of the contract or that he is in arrears in the matter of payment of the dues from him. He would contend that there is clearly discrimination as person similarly situated is singled out for hostile discrimination. He would submit that in respect of all the shop rooms, renewal is being granted. Only in the case of the petitioner, because of cartel working against the petitioner, there is a refusal to renew the licence. He would further submit that even though the interim order passed by this Court only disables dispossession of the petitioner, and that there is no order staying the proceedings of the Corporation in the conduct of the auction, the Corporation has not entered into any contract with the so-called highest bidder and it shows that the bid is not genuine and ultimately after dispossessing the petitioner, the so-called highest bidder will walk out which will result in injustice to the petitioner.

5. Learned counsel for the respondent Corporation, on the other hand, would submit that this is a case where, having regard to the fact that the Standing Committee, recommended that the matter should be decided by a fresh auction and the Council took a decision accordingly. The decision must be read as impliedly rejecting the application for renewal made by the petitioner. Section 215 providing for renewal is not mandatory. He would further submit that the building is situated in an independent building and the shops where renewals are granted are standing in a different footing and it cannot be compared with the running of a canteen. Regarding the tourist home, the term is five years and it is being re-tendered upon the expiry of the term, it is contended.

6. It is undoubtedly true that the petitioner has been awarded a contract, admittedly, as per the provisions of Section 215 of the Act. It is clear that Section 472 of the Act is inapplicable to the case at hand. But, the question arises whether in the facts of this case, in particular, the petitioner can

insist that the contract entered into between him and the Municipality should be directed to be renewed. Section 215 does not contain words which import a mandatory content. It uses the word "may". I extract the relevant proviso to Sub-section (2)(a) of Section 215 of the Kerala Municipality Act as under:

> *"Provided that after the said period, a licence may be renewed subject to such terms and conditions as may be fixed at that time."*

Thus, it is clear that it is a power given as evident from the heading of the Section that the Municipality may renew the contract. In the common run of cases, as for an instance, shop rooms, it may be true that a Corporation may as a rule resort to renewal. But, I would think that the case at hand, stands on a different footing. The right involved is a right for running canteen. The area in question is a fast developing area. The right was settled in favour of the petitioner in the year 2004 for an amount of Rs.50,111/=. A public auction was undoubtedly

held on 2.5.2007. Admittedly, the highest tender is for Rs.1,57,500/=. Petitioner also participated in the auction and he bid at Rs.55,000/=. The highest bid is nearly three times the amount bid by the petitioner. In fact, the crucial fact in deciding this case is the conduct of the petitioner in participating in the auction. Petitioner made Ext.P8 application on 9.4.2007. The auction was held on 2.5.2007. Apparently, without even the semblance of any protest or reservation of his right or even without approaching this Court in this behalf, petitioner voluntarily chose to participate in the auction. After having participated in the auction and he finds that he is out-bid by the highest bidder whose bid is nearly three times higher than his, I would think that this Court's jurisdiction under Article 226 being a discretionary remedy, should not be extended to the petitioner, whatever may be the niceties of his argument. In other words, the petitioner in the facts of this case, I would hold, is estopped from raising the contentions he has against the holding of the auction. In fact, the petitioner has not specifically challenged

the holding of the auction as such or decision to hold the auction as such. I find that the contention that the application for renewal is not decided, is not a matter of any moment in the facts of this case, having regard to two facts, firstly there is a decision by the local body to go in for an auction and secondly, eyes vide open the petitioner chose to participate in the action. In such circumstances, I would think that there is an implied rejection of his application for renewal. I cannot also overlook another fact which I consider to be significant, which is that the local bodies are without funds for carrying out various developmental activities. When funds come from any legitimate source, it would not be appropriate for this Court sitting in Article 226 of the Constitution of India to veto the proceedings by which the local body is deprived of precious public funds. I am not prepared to accept the case of the petitioner which is essentially is a conjecture, that the highest bidder will walk out of the Corporation and, therefore, the case of the petitioner requires acceptance. The question relevant to the carrying out of

the repairs would appear to be a matter of some dispute. At any rate, I cannot overlook the fact that by Ext.R1, the Corporation rejected the application of the petitioner and he chose to acquiesce in it and did not complain about it at that time. On the totality of facts, I decline jurisdiction and the Writ Petition is dismissed.

7. Learned counsel for petitioner prayed that some time may be granted for removal of the articles. Learned counsel for the respondent Corporation submits that a week's time will be given. I record the submission of the counsel for respondent Corporation.

K. M. JOSEPH, JUDGE

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